

The Pensions Brief

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Issues affecting DB schemes

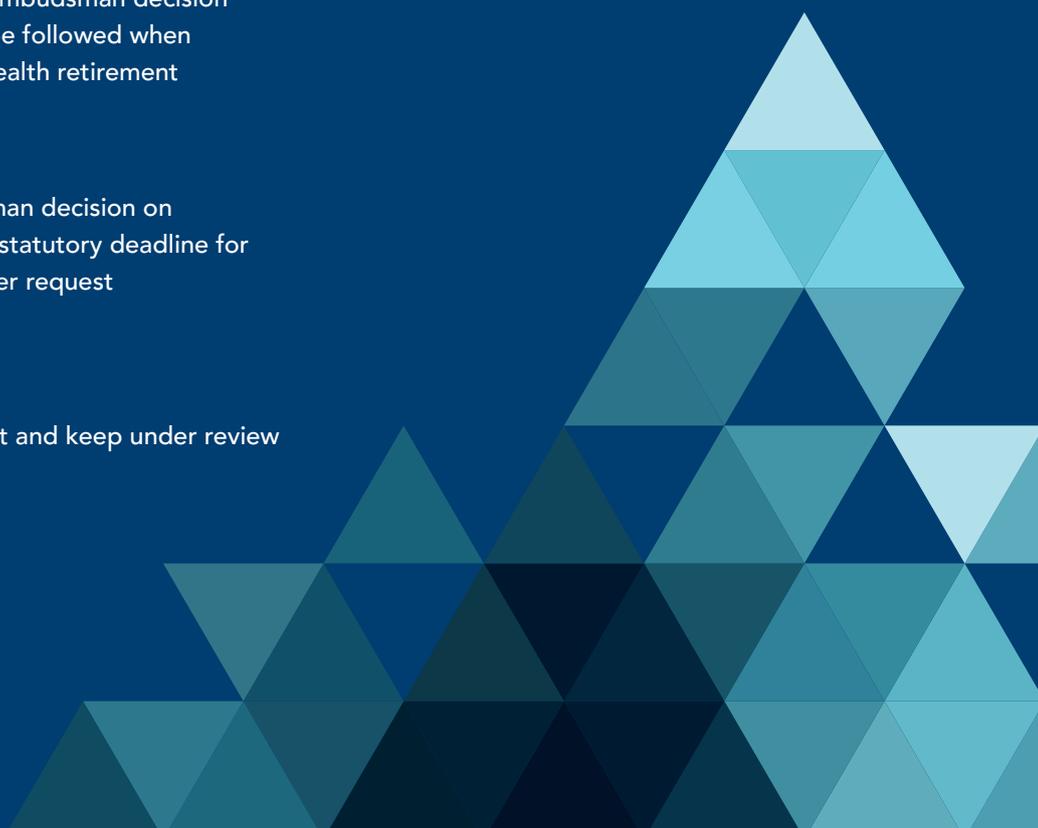
FINANCIAL SUPPORT DIRECTIONS

Court of Appeal decision on the factors that the Pensions Regulator may take into account when deciding whether to issue a financial support direction

Issues affecting DC schemes

INVESTMENT GOVERNANCE

Revised Pensions Regulator guidance on DC investment governance



Issues affecting all schemes

Investment and disclosure – additional new requirements

Regulations have been made that extend the requirements that come into force in October 2019 and October 2020 on the policies that must be included in a scheme's statement of investment principles (SIP), and the information that must be included in a scheme's annual report and published on a website. The additional requirements include:

- A requirement for all schemes to include a policy in their SIP on the trustees' arrangements with asset managers.
- A requirement for DB schemes to publish their SIP on a website (a requirement for DC schemes to publish their SIP on a website was announced last year and comes into force in October 2019).
- A requirement for DC schemes to also include an asset manager policy in their SIP for the scheme's DC default arrangement.
- A requirement for all schemes to include their asset manager policy in the scheme's annual report.
- A requirement for DB schemes to include a statement in their annual report giving certain information on compliance with their stewardship policy and voting behaviour, and to publish this statement on a website.

- Additional content that must be included in the implementation statement that DC schemes are required to include in their annual report and publish on a website.

The requirements come into force between October 2020 and October 2021. For more information, please see our [legal update](#).

The Pensions Regulator has published a [statement](#) summarising the additional requirements.

Action

Trustees should ensure that they understand how the new requirements dovetail with those announced last year so that they can factor the requirements into their scheme planning, and make arrangements to comply with them by the relevant deadlines. We have produced tables summarising the new requirements and those announced last year, and when they come into force, which are available to our clients on request.

Investment consultancy and fiduciary management – new requirements

The Competition and Markets Authority (CMA) has published the [final remedies order](#) in its market investigation into investment consultancy and fiduciary management services, as well as an accompanying [explanatory note](#). The order takes effect on 10 December 2019 and requires trustees to:

- Run a competitive tender process when appointing (or re-appointing) a fiduciary manager in respect of 20% or more of scheme assets.
- Set strategic objectives for their investment consultant.
- Submit annual compliance statements to the CMA.

The Pensions Regulator is expected to consult this summer on guidance to support trustees in complying with their duties under the order. The order also imposes requirements on service providers. For more information, please see our [legal update](#).

Action

Trustees should take advice on putting in place strategic objectives for their investment consultants. Trustees who have fiduciary management arrangements in place, and trustees considering appointing a fiduciary manager, should also take advice on how the new requirements on competitive tendering will affect them.

Transfers and pension scams – code of practice

The Pension Scams Industry Group has published [version 2.1](#) of its code of good practice on combating pension scams. This replaces version 2.0 which was published in June 2018. The code has been updated to reflect developments including:

- the ban on cold calling; and
- the launch of the Money and Pensions Service.

Action

Trustees and their administrators may find the revised code useful when considering what actions they can take to help protect members from pension scams.

Ill-health retirement – decision-making process

The Deputy Pensions Ombudsman has directed an employer to reconsider its decision to reject an enhanced ill-health retirement application. In addition to finding that the employer had not considered the relevant evidence in reaching its decision, the Deputy Ombudsman considered that the employer's pension manager's dual role as scheme secretary had affected the decision-making process and may have contributed to a lack of procedural clarity.

Ms N (PO-13446)

Action

Employers and trustees should ensure that they follow a proper decision-making process when considering ill-health retirement applications and that they consider all relevant evidence.

Transfers – failure to meet statutory deadline

The Pensions Ombudsman has directed a trustee to pay a member £3,000 compensation for distress and inconvenience caused by the trustee's failure to process the member's transfer request by the six month statutory deadline. The transfer, which was requested in February 2018, still had not been completed by the time of the Ombudsman's decision (May 2019), and the trustee had failed to produce any cogent reasons for the delay. The Ombudsman therefore decided that the distress and inconvenience caused was exceptional, meriting the much higher than usual compensation amount. The Ombudsman described the trustee's behaviour as "inexcusable" and stated that he would notify the Pensions Regulator of the trustee's failure to process the transfer. The Ombudsman also directed the trustee to compensate the member for the additional mortgage interest payments that the member was obliged to make as a result of the transfer not being processed.

Mr E (PO-22695)

Action

Trustees and their administrators should ensure that not only do they meet the six month statutory deadline for processing transfer requests, but that they do not unreasonably delay the processing of transfer requests and that they treat the statutory deadline as a long-stop rather than a target.

Issues affecting DB schemes

Financial support directions – Court guidance

The Court of Appeal has upheld the Upper Tribunal's decision that it was reasonable for the Pensions Regulator to have issued financial support directions (FSDs) to five companies. The Court held that:

- The FSD legislation contains no express time limits in relation to the matters which the Regulator must take into account when deciding whether it is reasonable to impose an FSD. The Regulator was not therefore prohibited from considering matters which occurred prior to the legislation coming into force.
- In reaching the decision that it was reasonable for the Regulator to issue the FSDs, the Upper Tribunal had not erred in law by reaching a decision which no reasonable tribunal could have reached.

Granada UK Rental & Retail Limited and others v Pensions Regulator [2019] EWCA Civ 1032

Action

No action required.

Issues affecting DC schemes

Investment – Pensions Regulator guidance

The Pensions Regulator has updated its guidance accompanying the investment governance section of its DC code of practice to cover the new requirements in relation to the content of the statement of investment principles and the annual report that are coming into force between October 2019 and October 2020.

Action

Trustees of DC schemes may find the guidance helpful when considering the changes they need to make to their statement of investment principles and annual report.



Mayer Brown news

Upcoming events

All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

- **Trustee Foundation Course**
17 September 2019
10 December 2019
- **Trustee Building Blocks Classes**
12 November 2019 – DB funding and investment
- **Annual Pensions Conference**
2 October 2019

Employer Perspectives – news and views on employment and pensions issues

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Mayer Brown media comment

[Duncan Watson](#) was quoted in Investment & Pensions Europe on the additional trustee investment and disclosure requirements.

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Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.

For more information about the Pensions Group, please contact:



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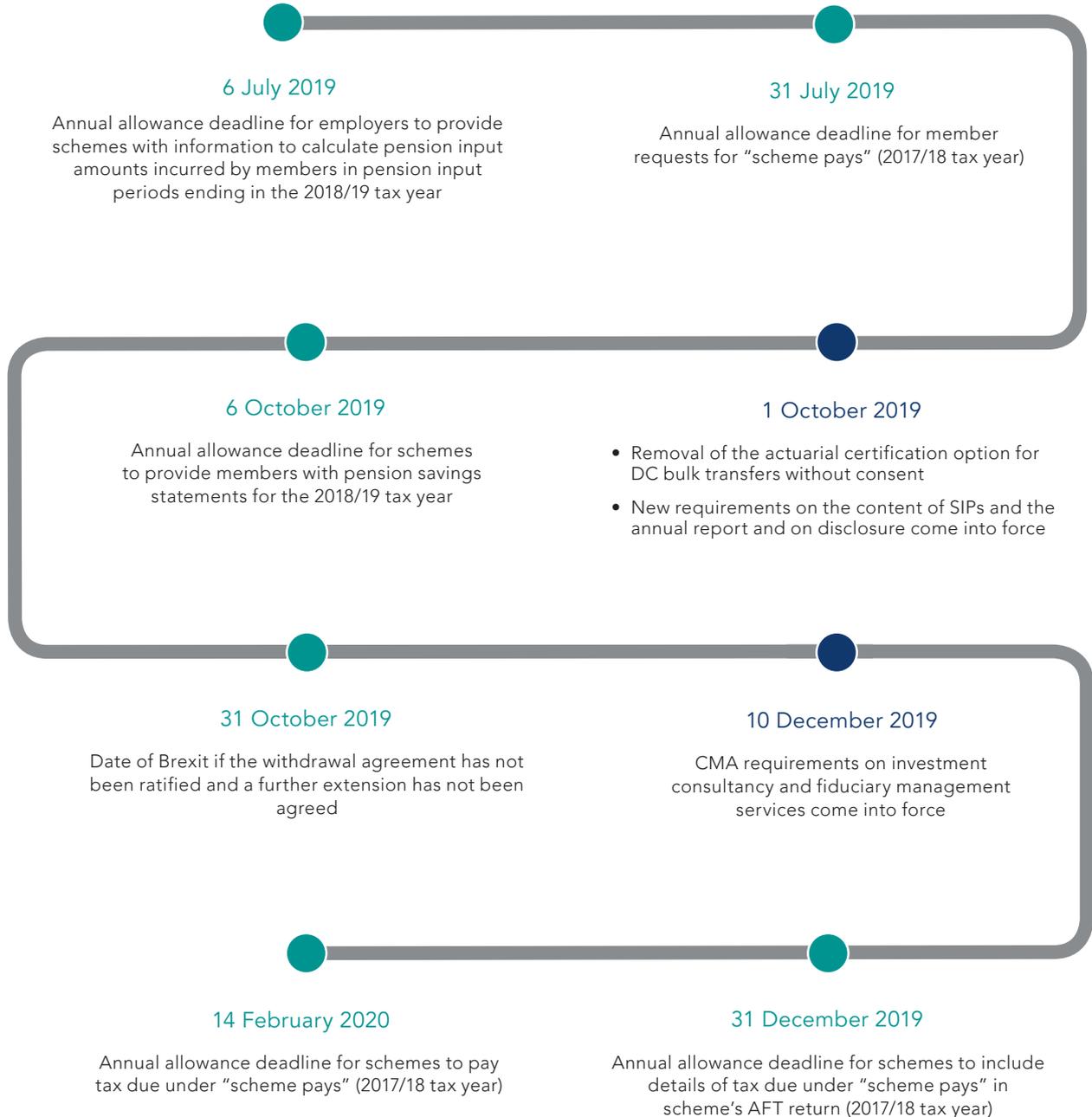
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Dates to note over the next 12 months



Key:



Important dates to note



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